

**DEPARTMENT OF COMMERCE****International Trade Administration**

[(C-428-829); (C-421-809); (C-412-821)]

**Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Affirmative Countervailing Duty Determinations.

**SUMMARY:** On May 14, 2001, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determinations in the countervailing duty investigations of low enriched uranium (subject merchandise) from Germany, the Netherlands, and the United Kingdom for the period January 1, 1999 through December 31, 1999 (66 FR 24329).

The net subsidy rate in the *Final Determination* differs from that of the *Preliminary Determination*. The revised final net subsidy rate for the investigated company is listed below in the "Suspension of Liquidation" section of this notice.

**EFFECTIVE DATE:** December 21, 2001.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak (Germany) at 202-482-2209, Stephanie Moore (the Netherlands) at 202-482-3692, and Eric B. Greynolds (United Kingdom) at 202-482-6071, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:****Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2000).

**Background**

On May 14, 2001, the Department published the preliminary determinations of its investigations of low enriched uranium from Germany,

the Netherlands, and the United Kingdom. See *Notice of Preliminary Affirmative Countervailing Duty Determinations and Alignment with Final Antidumping Duty Determinations: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 66 FR 24329 (May 14, 2001) (*Preliminary Determinations*). These investigations cover low enriched uranium (subject merchandise) from Germany, the Netherlands, and the United Kingdom for the period January 1, 1999, through December 31, 1999.

We invited interested parties to comment on the *Preliminary Determinations*. On October 22 and 23, 2001, the petitioners<sup>1</sup>, the Ad Hoc Utilities Group,<sup>2</sup> and Urenco Ltd., Urenco (Capenhurst) Ltd., Urenco Nederland BV, and Urenco Deutschland GmbH (collectively, Urenco or the respondents) filed briefs on common scope issues in the antidumping and countervailing duty investigations of LEU from France, Germany, the Netherlands and the United Kingdom. Rebuttal briefs on these common scope issues were filed on October 29, 2001, and a public hearing on the common scope issues was held on October 31, 2001. On October 26, 2001, we received comments from the petitioners and the respondents. On November 5, 2001, we received rebuttal comments from petitioners and respondents. A public hearing was held at the Department of Commerce on November 7, 2001. On or about September 28, 2001, and on November 22, 2001, we received letters from the EC regarding certain issues in these investigations. On November 7, 2001, Mr. Grant Aldonas, Under-Secretary for International Trade, replied to the first letter. We invited comments on these letters, which we received from petitioners, respondents, and the Ad Hoc Utilities Group, on

<sup>1</sup> The petitioners in these investigations are USEC, Inc. and its wholly-owned subsidiary, United States Enrichment Corporation (collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, CLC, Local 5-550 and Local 5-689 (collectively PACE).

<sup>2</sup> In accordance with section 777(h) of the Act of the Ad Hoc Utilities Group, whose members include: Arizona Public Service Co., Carolina Power & Light Co., Dominion Generation, Duke Energy Corp., DTE Energy, Entergy Services, Inc., Exelon Corporation, First Energy Nuclear Operating Co., Florida Power Corp., Florida Power and Light Co., Nebraska Public Power District, Nuclear Management Co. LLC (on behalf of certain member companies), PPL Susquehanna LLC, PSEG Nuclear LLC, South Texas Project, Southern California Edison, Southern Nuclear Operating Co., Union Electric Company, and Wolf Creek Nuclear Operating Corp., submitted comments as industrial users of subject merchandise.

November 15, 2001, and November 29, 2001.

These final determinations were originally due on November 26, 2001. We subsequently tolled the final determination deadline in these investigations until December 13, 2001, to accommodate certain verifications and a delayed briefing and hearing schedule that were delayed because of the events of September 11, 2001.

**Amended Scope of Investigation**

For purposes of these investigations, the product covered is all low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF<sub>6</sub>) with a U<sup>235</sup> product assay of less than 20 percent that has not been converted into another chemical form, such as UO<sub>2</sub>, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of these investigations. Specifically, these investigations do not cover enriched uranium hexafluoride with a U<sup>235</sup> assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of these investigations. For purposes of these investigations, fabricated uranium is defined as enriched uranium dioxide (UO<sub>2</sub>), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U<sub>3</sub>O<sub>8</sub>) with a U<sup>235</sup> concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U<sup>235</sup> concentration of no greater than 0.711 percent are not covered by the scope of these investigations.

Also excluded from these investigations is LEU owned by a foreign utility end-user and imported into the United States by or for such end-user solely for purposes of conversion by a U.S. fabricator into uranium dioxide (UO<sub>2</sub>) and/or fabrication into fuel assemblies so long as the uranium dioxide and/or fuel assemblies deemed to incorporate such imported LEU (i) remain in the possession and control of the U.S. fabricator, the foreign end-user, or their designed transporter(s) while in U.S. customs territory, and (ii) are re-exported within eighteen (18) months of entry of the LEU for consumption by the end-user in a nuclear reactor outside the United States. Such entries must be accompanied by the certifications of the importer and end user.

The merchandise subject to these investigations is classified in the

Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Scope Clarification

For further details, see Comment 1 of the *“Issues and Decision Memorandum for the Antidumping Duty Investigation of Low Enriched Uranium from Germany, Netherlands and the United Kingdom”* (Decision Memorandum) from Bernard T. Carreau, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated concurrently with this notice.

#### Goods Versus Services

Parties in all eight concurrent investigations of this product have submitted comments on this issue. For a full discussion see *Notice of Final Determination of Sales at Less Than Fair Value: Low Enriched Uranium from France* which is published concurrently with this notice.

#### Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 1999 through December 31, 1999.

#### Verification

As provided in section 782(i) of the Act, we conducted verification of the information submitted by Urenco from June 11 through June 15, 2001, in the Netherlands; June 18 through June 22, 2001, in Germany; and September 25 through October 2, 2001, in the United Kingdom. We used standard verification procedures, including meeting with government and company officials and examining relevant accounting records and original source documents provided by the respondents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit of the Department of Commerce (Room B-099).

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these investigations are addressed in the *“Issues and Decision Memorandum”* (Decision Memorandum) dated December 13, 2001, which is hereby adopted by this notice. A list of issues which parties have raised and to which

we have responded, all of which are in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in these investigations and the corresponding recommendations in this public memorandum which is on file in room B-099 of the Main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at <http://ia.ita.doc.gov>, under the heading “Federal Register Notices.” The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Suspension of Liquidation

In accordance with sections 701(d) and 703(d)(1)(A)(i) of the Act, we have calculated a single rate for the Urenco Group with respect to exports from each of the three countries. The “all others” rate is the same as the rate for the Urenco Group. These rates are summarized in the table below:

Producer/exporter	Net subsidy rate
Urenco Group Ltd. ....	2.26 percent <i>ad valorem</i> .
All Others .....	2.26 percent <i>ad valorem</i> .

In accordance with our preliminary affirmative determinations, we instructed the U.S. Customs Service to suspend liquidation of all entries of low enriched uranium from Germany, the Netherlands, and the United Kingdom, which were entered or withdrawn from warehouse, for consumption on or after May 14, 2001, the date of the publication of our preliminary determinations in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the U.S. Customs Service to discontinue the suspension of liquidation for merchandise entered on or after September 11, 2001, but to continue the suspension of liquidation of entries made between May 14, 2001 and September 10, 2001.

We will reinstate suspension of liquidation under section 706(a) of the Act for all entries if the ITC issues a final affirmative injury determination and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

#### ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publically or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated. If however, the ITC determines that such injury does exist, we will issue countervailing duty orders.

#### Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These determinations are published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 13, 2001.

**Faryar Shirzad**,  
Assistant Secretary for Import  
Administration.

#### Appendix I—Issues and Decision Memorandum

##### Summary

Methodology and Background Information

I. Subsidies Valuation Information

A. Allocation Period

B. Benchmarks for Loans and Discount Rate

C. Treatment of the Ad Valorem Rate Calculation and the Denominator

##### Analysis of Programs

I. Programs Determined to Confer Subsidies from the Government of Germany

A. Enrichment Technology Research and Development Program

B. Forgiveness of Centrifuge Enrichment Capacity Subsidies

C. Investment Allowance Act

II. Program Determined To Confer Subsidies From the Government of the Netherlands

A. Regional Investment Premium

III. Programs Determined Not to Confer a Benefit from the Government of Germany

A. Regional Government Provision of Industrial Site

- B. Regional Development Grants
- IV. Programs Determined Not to Confer a Benefit from the Government of the Netherlands
  - A. Centrifuge Enrichment Technology Research
  - B. 1981 Equity Conversion
- V. Programs Determined Not to Confer a Benefit from the Government of the United Kingdom
  - A. Regional Development Grants
  - B. Centrifuge Development Grant
  - C. Fossil Fuel Levy
  - D. Forgiveness of Decommissioning Debt
- VI. Programs Determined Not Countervailable from the Government of the Netherlands
  - A. Subordinated Shareholder Loan Provided to Urenco Ltd. by UCN
  - B. 1998 Shareholder Loan
- VII. Programs Determined Not Countervailable from the Government of the United Kingdom
  - A. Assumption of Debt: European Investment Bank Loans
  - B. Loan-Stock Debt Forgiveness Program
  - C. Subordinated Shareholder Loan Provided to Urenco Ltd. by INFL
  - D. Extraordinary Asset Write Downs Prior to Transfer of BNFL Enrichment Facilities
- VIII. Programs Determined Not Used in the Netherlands
  - A. Wet Investoringsrekening Law (WIR)
  - B. Subsidized Loan Forgiveness
- IX. Program Determined Not Used in the United Kingdom
  - A. Financial Assistance Under the Electricity Act of 1989
- X. Total Ad Valorem Rate
- XI. Analysis of Comments
  - Comment 1: Scope Clarification
  - Comment 2: International Consortium Provision
  - Comment 3: Average Useful Life
  - Comment 4: 1993 Equity Investment
  - Comment 5: EIB Loans
  - Comment 6: Regional Development Grants
  - Comment 7: Centrifuge Development Grant (CDG)
  - Comment 8: Subordinated Shareholder Loan Provided to Urenco Ltd. by INFL and UCN
  - Comment 9: Loan Stock Debt Forgiveness
  - Comment 10: Regional Investment Premiums (IPR)
  - Comment 11: Loan Forgiveness
  - Comment 12: 1981 Equity Conversion
  - Comment 13: Centrifuge Enrichment Technology Research and Development Programs
  - Comment 14: Sales Denominator of the Urenco Group
  - Comment 15: Investment Allowance Act
  - Comment 16: City and State Government Development Grants
  - Comment 17: Centrifuge Enrichment Capacity Subsidies
  - Comment 18: Enrichment Technology R&D Subsidies
  - Comment 19: WIR Program

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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Export Trade Certificate of Review

**ACTION:** Notice of application to amend an Export Trade Certificate of Review.

**SUMMARY:** The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

**FOR FURTHER INFORMATION CONTACT:** Vanessa M. Bachman, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

#### Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under

the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 88-5A012."

The National Tooling and Machining Association's ("NTMA") original Certificate was issued on October 18, 1988 (53 FR 43140, October 25, 1988) and previously amended on December 4, 1989 (54 FR 51914, December 19, 1989); September 2, 1993 (58 FR 47868, September 13, 1993); May 3, 2000 (65 FR 30073, May 10, 2000); and April 5, 2001 (66 FR 21335, April 30, 2001). A summary of the application for an amendment follows.

#### Summary of the Application

**Applicant:** National Tooling and Machining Association, 9300 Livingston Road, Ft. Washington, Maryland 20744.

**Contact:** Thomas H. Garcia, Manager, Marketing Programs, Telephone: (301) 248-6200.

**Application No.:** 88-5A012.

**Date Deemed Submitted:** December 12, 2001.

**Proposed Amendment:** NTMA seeks to amend its Certificate so that the attached list will constitute the "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

**Dated:** December 18, 2001.

**Vanessa M. Bachman,**

*Acting Director, Office of Export Trading Company Affairs.*

21st Century Tool & Die, Inc.,

Waynesboro, TN

3 M MTC, Petaluma, CA

4 Axis Machining, Inc., Denver, CO

A-1 Precision Metal Products, Phoenix, AZ

A & A Industries, Inc., Peabody, MA

A & A Machine Company, Inc., Southampton, PA

A & A Machine Shop, Inc., La Marque, TX

A & B Machine, Van Nuys, CA

A & B Machine Shop, Rockford, IL

A & B Tool & Manufacturing Corp., Toledo, OH

A & D Precision, Fremont, CA

A & E Custom Manufacturing,

Technologies, Inc., Kansas City, KS

A & E Machine Shop, Inc., Lone Star, TX

A & G Machine, Inc., Auburn, WA

A & S Tool & Die Company, Inc., Kernersville, NC

A A Precisioneering, Inc., Meadville, PA

A B A Division, A B A—P G T, Inc., Manchester, CT